

Introduced by Senator Wyland

February 19, 2010

An act to amend Sections 17052.12, 17250, 17276, 17276.10, 23609, 24349, 24416, and 24416.10 of, to add Sections 6377.1, 17053.76, and 23622.9 to, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1239, as introduced, Wyland. Income and corporation tax credits: research and development: manufacturer's investment: qualified employees.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

The bill would exempt from those taxes, on or after January 1, 2011, the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property purchased by a qualified person for use in the manufacturing process, as specified, or to be used primarily in qualified research, as specified. This bill would also exempt the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property purchased for use by a contractor for specified purposes.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws. Both laws, in specified conformity to federal income tax laws, allow a credit for

increasing research expenses, as defined. In general, the amount of the credit under both laws is equal to 15% of the excess of the qualified research expenses, as defined, for the taxable year over the base amount, as defined, and, in addition, for purposes of the Corporation Tax Law, 24% of the basic research payments, as defined. The term “base amount” means the product of the average annual gross receipts of the taxpayer for each of the specified years preceding the taxable year and the fixed-base percentage, as defined, but in no event less than 50% of the qualified research expenses for the taxable year. A taxpayer may elect an alternative incremental credit for increasing research expenses in modified conformity to federal income tax laws.

This bill would increase the credit for increasing research expenses to 20% of the excess of the qualified research expenses. This bill would also provide complete conformity to the alternative incremental credit provided under those federal income tax laws.

The Personal Income Tax Law and the Corporation Tax Law authorize a credit for taxable years beginning on or after January 1, 2009, and before January 1, 2011, in an amount equal to \$3,000, prorated as provided, for each full-time employee hired during the taxable year by an employer that employed a specified number of employees. Those laws contain a specified cut-off date for the credits and require those sections to be repealed as of a specified date.

This bill would delete the requirement related to the number of employees employed by the employer and the specified cut-off date and repeal date. This bill would, for taxable years beginning on or after January 1, 2010, also allow a credit under both laws in an amount equal to specified percentages of wages paid by a qualified employer to a qualified employee.

The Personal Income Tax Law and the Corporation Tax Law authorize a taxpayer to depreciate property, determined by an applicable depreciation method, an applicable recovery period, and an applicable convention.

This bill would reduce the recovery period for the depreciating property to one-half of the amount authorized by existing law.

The Personal Income Tax Law and the Corporation Tax Law provide that a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of loss. Those laws allow a net operating loss carryback in an amount that shall not exceed specified percentages of the net operating loss.

This bill would, commencing in 2015, extend the net operating loss carryback to each of the 5 taxable years preceding the taxable year of the loss and would increase the percentage of net operating loss carryback to 100% of the net operating loss for taxable years beginning on or after January 1, 2011.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6377.1 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6377.1. (a) (1) On and after January 1, 2011, there are
- 4 exempted from the taxes imposed by this part the gross receipts
- 5 from the sale of, and the storage, use, or other consumption in this
- 6 state of, any of the following:
- 7 (A) Tangible personal property purchased for use by a qualified
- 8 person to be used primarily in any stage of the manufacturing,
- 9 processing, refining, fabricating, or recycling of property,
- 10 beginning at the point any raw materials are received by the
- 11 qualified person and introduced into the process and ending at the
- 12 point at which the manufacturing, processing, refining, fabricating,
- 13 or recycling has altered property to its completed form, including
- 14 packaging, if required.
- 15 (B) Tangible personal property purchased for use by a contractor
- 16 purchasing that property either as an agent of a qualified person
- 17 or for the contractor's own account and subsequent resale to a
- 18 qualified person for use in the performance of a construction
- 19 contract for the qualified person who will use the tangible personal
- 20 property as an integral part of the manufacturing, processing,
- 21 refining, fabricating, or recycling process, or as a storage facility
- 22 for use in connection with the manufacturing process.
- 23 (C) Tangible personal property purchased for use by a qualified
- 24 person to be used primarily in research and development.
- 25 (2) This exemption shall not apply to any tangible personal
- 26 property that is used primarily in administration, general
- 27 management, or marketing.
- 28 (b) For purposes of this section:

1 (1) “Fabricating” means to make, build, create, produce, or
2 assemble components or property to work in a new or different
3 manner.

4 (2) “Manufacturing” means the activity of converting or
5 conditioning property by changing the form, composition, quality,
6 or character of the property for ultimate sale at retail or use in the
7 manufacturing of a product to be ultimately sold at retail.
8 Manufacturing includes any improvements to tangible personal
9 property that result in a greater service life or greater functionality
10 than that of the original property.

11 (3) “Primarily” means tangible personal property used 50 percent
12 or more of the time in an activity described in subdivision (a).

13 (4) “Process” means the period beginning at the point at which
14 any raw materials are received by the qualified taxpayer and
15 introduced into the manufacturing, processing, refining, fabricating,
16 or recycling activity of the qualified taxpayer and ending at the
17 point at which the manufacturing, processing, refining, fabricating,
18 or recycling activity of the qualified taxpayer has altered tangible
19 personal property to its completed form, including packaging, if
20 required. Raw materials shall be considered to have been
21 introduced into the process when the raw materials are stored on
22 the same premises where the qualified taxpayer’s manufacturing,
23 processing, refining, or recycling activity is conducted. Raw
24 materials that are stored on premises other than where the qualified
25 taxpayer’s manufacturing, processing, refining, fabricating, or
26 recycling activity is conducted, shall not be considered to have
27 been introduced into the manufacturing, processing, refining,
28 fabricating, or recycling process.

29 (5) “Processing” means the physical application of the materials
30 and labor necessary to modify or change the characteristics of
31 property.

32 (6) “Qualified person” means either of the following:

33 (A) A person who is engaged in those lines of business described
34 in Codes 3111 to 3399, inclusive, of the North American Industry
35 Classification System (NAICS) published by the United States
36 Office of Management and Budget (OMB), 2007 edition.

37 (B) An affiliate of a person qualified pursuant to subparagraph
38 (A) shall also be considered a qualified person as long as the
39 affiliate is included as a member of that person’s unitary group for

1 which a combined report is required to be filed under Article I
2 (commencing with Section 25101) of Chapter 17.

3 (7) “Refining” means the process of converting a natural
4 resource to an intermediate or finished product.

5 (8) “Tangible personal property” includes, but is not limited to,
6 all of the following:

7 (A) Machinery and equipment, including component parts and
8 contrivances such as belts, shafts, moving parts, and operating
9 structures.

10 (B) All equipment or devices used or required to operate,
11 control, regulate, or maintain the machinery, including, without
12 limitation, computers, data processing equipment, and computer
13 software, together with all repair and replacement parts with a
14 useful life of one or more years therefor, whether purchased
15 separately or in conjunction with a complete machine and
16 regardless of whether the machine or component parts are
17 assembled by the taxpayer or another party.

18 (C) Property used in pollution control that meets standards
19 established by this state or any local or regional governmental
20 agency within this state.

21 (D) Special purpose buildings and foundations used as an
22 integral part of the manufacturing, processing, refining, or
23 fabricating process, or that constitute a research or storage facility
24 used during the manufacturing process. Buildings used solely for
25 warehousing purposes after completion of the manufacturing
26 process are not included.

27 (E) Fuels used or consumed in the manufacturing process.

28 (9) “Tangible personal property” shall not include any of the
29 following:

30 (A) Consumables with a normal useful life of less than one year,
31 except as provided in subparagraph (E) of paragraph (8).

32 (B) Furniture, inventory, and equipment used in the extraction
33 process, or equipment used to store finished products that have
34 completed the manufacturing process.

35 (c) No exemption shall be allowed under this section unless the
36 purchaser furnishes the retailer with an exemption certificate,
37 completed in accordance with any instructions or regulations as
38 the board may prescribe, and the retailer subsequently furnishes
39 the board with a copy of the exemption certificate. The exemption
40 certificate shall contain the sales price of the machinery or

1 equipment, the sale of, or the storage, use, or other consumption
2 of which is exempt pursuant to subdivision (a).

3 (d) Notwithstanding any provision of the Bradley-Burns
4 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
5 with Section 7200)) or the Transactions and Use Tax Law (Part
6 1.6 (commencing with Section 7251)), the exemption established
7 by this section shall not apply with respect to any tax levied by a
8 county, city, or district pursuant to, or in accordance with, either
9 of those laws.

10 (e) (1) Notwithstanding subdivision (a), the exemption provided
11 by this section shall not apply to any sale or use of property which,
12 within one year from the date of purchase, is removed from
13 California, converted from an exempt use under subdivision (a)
14 to some other use not qualifying for the exemption, or used in a
15 manner not qualifying for the exemption.

16 (2) Notwithstanding subdivision (a), the exemption established
17 by this section shall not apply with respect to any tax levied
18 pursuant to Sections 6051.2, 6051.5, 6201.2, or 6201.5, or pursuant
19 to Section 35 of Article XIII of the California Constitution.

20 (f) If a purchaser certifies in writing to the seller that the property
21 purchased without payment of the tax will be used in a manner
22 entitling the seller to regard the gross receipts from the sale as
23 exempt from the sales tax, and within one year from the date of
24 purchase, the purchaser (1) removes that property outside
25 California, (2) converts that property for use in a manner not
26 qualifying for the exemption, or (3) uses that property in a manner
27 not qualifying for the exemption, the purchaser shall be liable for
28 payment of sales tax, with applicable interest, as if the purchaser
29 were a retailer making a retail sale of the property at the time the
30 property is so removed, converted, or used, and the sales price of
31 the property to the purchaser shall be deemed the gross receipts
32 from that retail sale.

33 (g) This section applies to leases of tangible personal property
34 classified as “continuing sales” and “continuing purchases” in
35 accordance with Sections 6006.1 and 6010.1. The exemption
36 established by this section shall apply to the rentals payable
37 pursuant to such a lease, provided the lessee is a qualified person
38 and the property is used in an activity described in subdivision (a).
39 Rentals that meet the foregoing requirements are eligible for the
40 exemption for a period of six years from the date of commencement

1 of the lease. At the close of the six-year period from the date of
2 commencement of the lease, lease receipts are subject to tax
3 without exemption.

4 SEC. 2. Section 17052.12 of the Revenue and Taxation Code
5 is amended to read:

6 17052.12. For each taxable year beginning on or after January
7 1, 1987, there shall be allowed as a credit against the “net tax” (as
8 defined by Section 17039) for the taxable year an amount
9 determined in accordance with Section 41 of the Internal Revenue
10 Code, except as follows:

11 (a) For each taxable year beginning before January 1, 1997, the
12 reference to “20 percent” in Section 41(a)(1) of the Internal
13 Revenue Code is modified to read “8 percent.”

14 (b) (1) For each taxable year beginning on or after January 1,
15 1997, and before January 1, 1999, the reference to “20 percent”
16 in Section 41(a)(1) of the Internal Revenue Code is modified to
17 read “11 percent.”

18 (2) For each taxable year beginning on or after January 1, 1999,
19 and before January 1, 2000, the reference to “20 percent” in Section
20 41(a)(1) of the Internal Revenue Code is modified to read “12
21 percent.”

22 (3) For each taxable year beginning on or after January 1, 2000,
23 *and before January 1, 2010*, the reference to “20 percent” in
24 Section 41(a)(1) of the Internal Revenue Code is modified to read
25 “15 percent.”

26 (4) *For each taxable year beginning on or after January 1,*
27 *2010, the reference to “20 percent” in Section 41(a)(1) of the*
28 *Internal Revenue Code shall apply.*

29 (c) Section 41(a)(2) of the Internal Revenue Code, relating to
30 basic research payments, shall not apply.

31 (d) “Qualified research” shall include only research conducted
32 in California.

33 (e) In the case where the credit allowed under this section
34 exceeds the “net tax,” the excess may be carried over to reduce
35 the “net tax” in the following year, and succeeding years if
36 necessary, until the credit has been exhausted.

37 (f) (1) With respect to any expense paid or incurred after the
38 operative date of Section 6378, Section 41(b)(1) of the Internal
39 Revenue Code is modified to exclude from the definition of
40 “qualified research expense” any amount paid or incurred for

1 tangible personal property that is eligible for the exemption from
2 sales or use tax ~~provided by~~ *under* Section 6378.

3 (2) For each taxable year beginning on or after January 1, 1998,
4 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
5 Internal Revenue Code, relating to contract research expenses, is
6 modified to read “this part or Part 11 (commencing with Section
7 23001).”

8 (g) (1) For each taxable year beginning on or after January 1,
9 ~~2000; 2000, and before January 1, 2010:~~

10 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
11 of the Internal Revenue Code is modified to read “one and
12 forty-nine hundredths of one percent.”

13 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
14 the Internal Revenue Code is modified to read “one and
15 ninety-eight hundredths of one percent.”

16 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
17 of the Internal Revenue Code is modified to read “two and
18 forty-eight hundredths of one percent.”

19 (2) *For each taxable year beginning on or after January 1,*
20 *2010, Section 41(c)(4) of the Internal Revenue Code, relating to*
21 *the election of the alternative incremental credit, shall apply.*

22 ~~(2)~~

23 (3) Section 41(c)(4)(B) shall not apply and in lieu thereof an
24 election under Section 41(c)(4)(A) of the Internal Revenue Code
25 may be made for any taxable year of the taxpayer beginning on or
26 after January 1, 1998. That election shall apply to the taxable year
27 for which made and all succeeding taxable years unless revoked
28 with the consent of the Franchise Tax Board.

29 ~~(3)~~

30 (4) Section 41(c)(6) of the Internal Revenue Code, relating to
31 gross receipts, is modified to take into account only those gross
32 receipts from the sale of property held primarily for sale to
33 customers in the ordinary course of the taxpayer’s trade or business
34 that is delivered or shipped to a purchaser within this state,
35 regardless of f.o.b. point or any other condition of the sale.

36 (h) Section 41(h) of the Internal Revenue Code, relating to
37 termination, shall not apply.

38 (i) Section 41(g) of the Internal Revenue Code, relating to
39 special rule for passthrough of credit, is modified by each of the
40 following:

1 (1) The last sentence shall not apply.

2 (2) If the amount determined under Section 41(a) of the Internal
3 Revenue Code for any taxable year exceeds the limitation of
4 Section 41(g) of the Internal Revenue Code, that amount may be
5 carried over to other taxable years under the rules of subdivision
6 (e); except that the limitation of Section 41(g) of the Internal
7 Revenue Code shall be taken into account in each subsequent
8 taxable year.

9 SEC. 3. Section 17053.76 is added to the Revenue and Taxation
10 Code, to read:

11 17053.76. (a) For each taxable year beginning on or after
12 January 1, 2010, there shall be allowed a credit against the “net
13 tax,” as defined in Section 17039, an amount equal to the sum of
14 the following percentages of wages paid or incurred by the taxpayer
15 during the taxable year to each qualified employee of the taxpayer:

16 (1) Twenty-five percent for each qualified employee employed
17 by the qualified taxpayer for at least 120 hours, but less than 400
18 hours, during the taxable year.

19 (2) Forty percent for each qualified employee employed by the
20 qualified taxpayer for at least 400 hours during the taxable year.

21 (b) The credit under subdivision (a) shall be allowed only with
22 respect to the first six thousand dollars (\$6,000) of wages paid or
23 incurred during the taxable year to each qualified employee.

24 (c) For purposes of this section, all of the following definitions
25 shall apply:

26 (1) “Qualified employee” means an individual who is any of
27 the following, as documented by the Employment Development
28 Department:

29 (A) A recipient of CalWORKs benefits.

30 (B) A parolee.

31 (C) A veteran, as defined in Section 980 of the Military and
32 Veterans Code.

33 (D) Eligible for receipt of unemployment insurance benefits or
34 currently receiving unemployment insurance benefits.

35 (E) A person on probation.

36 (2) “Qualified taxpayer” means a taxpayer that is a person or
37 entity engaged in a trade or business within California.

38 (d) For purposes of this section, the qualified taxpayer shall do
39 both of the following:

1 (1) Obtain a certificate from the Employment Development
2 Department certifying that a qualified employee is employed by
3 the qualified taxpayer.

4 (2) Retain a copy of the certification and provide it upon request
5 to the Franchise Tax Board.

6 (e) (1) For purposes of this section:

7 (A) All employees of trades or businesses, which are not
8 incorporated, that are under common control shall be treated as
9 employed by a single qualified taxpayer.

10 (B) The credit, if any, allowable by this section with respect to
11 each trade or business shall be determined by reference to its
12 proportionate share of the expense of the qualified wages giving
13 rise to the credit, and shall be allocated in that manner.

14 (C) Principles that apply in the case of controlled groups of
15 corporations, as specified in subdivision (e) of Section 23622.9,
16 shall apply with respect to determining employment.

17 (2) If an employer acquires the major portion of a trade or
18 business of another employer (hereafter in this paragraph referred
19 to as the “predecessor”) or the major portion of a separate unit of
20 a trade or business of a predecessor, then, for purposes of applying
21 this section for any calendar year ending after that acquisition, the
22 employment relationship between a qualified employee and an
23 employer shall not be treated as terminated if the employee
24 continues to be employed in that trade or business.

25 (f) No credit shall be allowed under this section for any wages
26 for which any other credit or deduction has been claimed under
27 this part.

28 (g) In the case where the credit otherwise allowed under this
29 section exceeds the “net tax” for the taxable year, that portion of
30 the credit that exceeds the “net tax” may be carried over and added
31 to the credit, if any, in succeeding taxable years, until the credit is
32 exhausted. The credit shall be applied first to the earliest taxable
33 years possible.

34 SEC. 4. Section 17053.80 of the Revenue and Taxation Code,
35 as added by Section 3 of Chapter 10 of the Third Extraordinary
36 Session of the Statutes of 2009, is repealed.

37 ~~17053.80.—(a) For each taxable year beginning on or after~~
38 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
39 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
40 ~~for each net increase in qualified full-time employees, as specified~~

1 in subdivision (c), hired during the taxable year by a qualified
2 employer.

3 (b) For purposes of this section:

4 (1) “Acquired” includes any gift, inheritance, transfer incident
5 to divorce, or any other transfer, whether or not for consideration.

6 (2) “Qualified full-time employee” means:

7 (A) A qualified employee who was paid qualified wages by the
8 qualified employer for services of not less than an average of 35
9 hours per week.

10 (B) A qualified employee who was a salaried employee and
11 was paid compensation during the taxable year for full-time
12 employment, within the meaning of Section 515 of the Labor Code,
13 by the qualified employer.

14 (3) A “qualified employee” shall not include any of the
15 following:

16 (A) An employee certified as a qualified employee in an
17 enterprise zone designated in accordance with Chapter 12.8
18 (commencing with Section 7070) of Division 7 of Title 1 of the
19 Government Code.

20 (B) An employee certified as a qualified disadvantaged
21 individual in a manufacturing enhancement area designated in
22 accordance with Section 7073.8 of the Government Code.

23 (C) An employee certified as a qualified employee in a targeted
24 tax area designated in accordance with Section 7097 of the
25 Government Code.

26 (D) An employee certified as a qualified disadvantaged
27 individual or a qualified displaced employee in a local agency
28 military base recovery area (LAMBRA) designated in accordance
29 with Chapter 12.97 (commencing with Section 7105) of Division
30 7 of Title 1 of the Government Code.

31 (E) An employee whose wages are included in calculating any
32 other credit allowed under this part.

33 (4) “Qualified employer” means a taxpayer that, as of the last
34 day of the preceding taxable year, employed a total of 20 or fewer
35 employees.

36 (5) “Qualified wages” means wages subject to Division 6
37 (commencing with Section 13000) of the Unemployment Insurance
38 Code.

39 (6) “Annual full-time equivalent” means either of the following:

~~(A) In the case of a full-time employee paid hourly qualified wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.~~

~~(B) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the taxpayer by the employee divided by 52.~~

~~(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:~~

~~(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B):~~

~~(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.~~

~~(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.~~

~~(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.~~

~~(d) In the case where the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the following year, and succeeding seven years if necessary, until the credit is exhausted.~~

~~(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.~~

~~(f) For purposes of this section:~~

~~(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.~~

~~(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.~~

~~(g) (1) (A) Credit under this section and Section 23623 shall be allowed only for credits claimed on timely filed original returns~~

1 received by the Franchise Tax Board on or before the cut-off date
2 established by the Franchise Tax Board.

3 (B) For purposes of this paragraph, the cut-off date shall be the
4 last day of the calendar quarter within which the Franchise Tax
5 Board estimates it will have received timely filed original returns
6 claiming credits under this section and Section 23623 that
7 cumulatively total four hundred million dollars (\$400,000,000)
8 for all taxable years.

9 (2) The date a return is received shall be determined by the
10 Franchise Tax Board.

11 (3) (A) The determinations of the Franchise Tax Board with
12 respect to the cut-off date, the date a return is received, and whether
13 a return has been timely filed for purposes of this subdivision may
14 not be reviewed in any administrative or judicial proceeding

15 (B) Any disallowance of a credit claimed due to a determination
16 under this subdivision, including the application of the limitation
17 specified in paragraph (1), shall be treated as a mathematical error
18 appearing on the return. Any amount of tax resulting from such
19 disallowance may be assessed by the Franchise Tax Board in the
20 same manner as provided by Section 19051.

21 (4) The Franchise Tax Board shall periodically provide notice
22 on its Web site with respect to the amount of credit under this
23 section and Section 23623 claimed on timely filed original returns
24 received by the Franchise Tax Board.

25 (h) (1) The Franchise Tax Board may prescribe rules, guidelines
26 or procedures necessary or appropriate to carry out the purposes
27 of this section, including any guidelines regarding the limitation
28 on total credits allowable under this section and Section 23623
29 and guidelines necessary to avoid the application of paragraph (2)
30 of subdivision (f) through split-ups, shell corporations, partnerships,
31 tiered ownership structures, or otherwise.

32 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
33 Division 3 of Title 2 of the Government Code does not apply to
34 any standard, criterion, procedure, determination, rule, notice, or
35 guideline established or issued by the Franchise Tax Board
36 pursuant to this section.

37 (i) This section shall remain in effect only until December 1 of
38 the calendar year after the year of the cut-off date, and as of that
39 December 1 is repealed.

SEC. 5. Section 17053.80 of the Revenue and Taxation Code, as added by Section 3 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:

17053.80. (a) For each taxable year beginning on or after January 1, 2009, there shall be allowed as a credit against the “net tax,” as defined in Section 17039, three thousand dollars (\$3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a ~~qualified employer~~ *taxpayer*.

(b) For purposes of this section:

(1) “Acquired” includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) “Qualified full-time employee” means:

(A) A qualified employee who was paid qualified wages by the ~~qualified employer~~ *taxpayer* for services of not less than an average of 35 hours per week.

(B) A qualified employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the ~~qualified employer~~ *taxpayer*.

(3) A “qualified employee” shall not include any of the following:

(A) An employee certified as a qualified employee in an enterprise zone designated in accordance with Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(B) An employee certified as a qualified disadvantaged individual in a manufacturing enhancement area designated in accordance with Section 7073.8 of the Government Code.

(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.

(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.

(E) An employee whose wages are included in calculating any other credit allowed under this part.

1 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
2 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
3 ~~employees.~~

4 ~~(5)~~

5 (4) “Qualified wages” means wages subject to Division 6
6 (commencing with Section 13000) of the Unemployment Insurance
7 Code.

8 ~~(6)~~

9 (5) “Annual full-time equivalent” means either of the following:

10 (A) In the case of a full-time employee paid hourly qualified
11 wages, “annual full-time equivalent” means the total number of
12 hours worked for the taxpayer by the employee (not to exceed
13 2,000 hours per employee) divided by 2,000.

14 (B) In the case of a salaried full-time employee, “annual
15 full-time equivalent” means the total number of weeks worked for
16 the taxpayer by the employee divided by 52.

17 (c) The net increase in qualified full-time employees of a
18 qualified employer shall be determined as provided by this
19 subdivision:

20 (1) (A) The net increase in qualified full-time employees shall
21 be determined on an annual full-time equivalent basis by
22 subtracting from the amount determined in subparagraph (C) the
23 amount determined in subparagraph (B).

24 (B) The total number of qualified full-time employees employed
25 in the preceding taxable year by the taxpayer and by any trade or
26 business acquired by the taxpayer during the ~~current~~ *preceding*
27 taxable year.

28 (C) The total number of full-time employees employed in the
29 current taxable year by the taxpayer and by any trade or business
30 acquired during the current taxable year.

31 (2) For taxpayers who first commence doing business in this
32 state during the taxable year, the number of full-time employees
33 for the immediately preceding prior taxable year shall be zero.

34 (d) In the case where the credit allowed by this section exceeds
35 the “net tax,” the excess may be carried over to reduce the “net
36 tax” in the following year, and succeeding seven years if necessary,
37 until the credit is exhausted.

38 (e) Any deduction otherwise allowed under this part for qualified
39 wages shall not be reduced by the amount of the credit allowed
40 under this section.

(f) For purposes of this section:

(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.

~~(g) (1) (A) Credit under this section and Section 23623 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.~~

~~(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 that cumulatively total four hundred million dollars (\$400,000,000) for all taxable years.~~

~~(2) The date a return is received shall be determined by the Franchise Tax Board.~~

~~(3) (A) The determinations of the Franchise Tax Board with respect to the cut-off date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding~~

~~(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.~~

~~(4) The Franchise Tax Board shall periodically provide notice on its Web site with respect to the amount of credit under this section and Section 23623 claimed on timely filed original returns received by the Franchise Tax Board.~~

(h)

(g) (1) The Franchise Tax Board may prescribe rules, guidelines or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 23623 and guidelines necessary to avoid the application of paragraph (2)

1 of subdivision (f) through split-ups, shell corporations, partnerships,
2 tiered ownership structures, or otherwise.

3 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
4 Division 3 of Title 2 of the Government Code does not apply to
5 any standard, criterion, procedure, determination, rule, notice, or
6 guideline established or issued by the Franchise Tax Board
7 pursuant to this section.

8 *(h) No credit shall be allowed under this section for any wages*
9 *for which any other credit or deduction has been claimed under*
10 *this part.*

11 ~~(j)~~

12 *(i)* The amendments made to this section by the act adding this
13 subdivision shall apply only to taxable years beginning on or after
14 January 1, 2010.

15 SEC. 6. Section 17250 of the Revenue and Taxation Code is
16 amended to read:

17 17250. (a) Section 168 of the Internal Revenue Code is
18 modified as follows:

19 (1) Any reference to “tax imposed by this chapter” in Section
20 168 of the Internal Revenue Code means “net tax,” as defined in
21 Section 17039.

22 (2) (A) Section 168(e)(3) is modified to provide that any
23 grapevine, replaced in a vineyard in California in any taxable year
24 beginning on or after January 1, 1992, as a direct result of a
25 phylloxera infestation in that vineyard, or replaced in a vineyard
26 in California in any taxable year beginning on or after January 1,
27 1997, as a direct result of Pierce’s disease in that vineyard, shall
28 be “five-year property,” rather than “10-year property.”

29 (B) Section 168(g)(3) of the Internal Revenue Code is modified
30 to provide that any grapevine, replaced in a vineyard in California
31 in any taxable year beginning on or after January 1, 1992, as a
32 direct result of a phylloxera infestation in that vineyard, or replaced
33 in a vineyard in California in any taxable year beginning on or
34 after January 1, 1997, as a direct result of Pierce’s disease in that
35 vineyard, shall have a class life of 10 years.

36 (C) Every taxpayer claiming a depreciation deduction with
37 respect to grapevines as described in this paragraph shall obtain a
38 written certification from an independent state-certified integrated
39 pest management adviser, or a state agricultural commissioner or
40 adviser, that specifies that the replanting was necessary to restore

1 a vineyard infested with phylloxera or Pierce's disease. The
2 taxpayer shall retain the certification for future audit purposes.

3 (3) Section 168(j) of the Internal Revenue Code, relating to
4 property on Indian reservations, shall not apply.

5 (4) Section 168(k) of the Internal Revenue Code, relating to
6 special allowance for certain property acquired after September
7 10, 2001, and before January 1, 2005, shall not apply.

8 (5) Sections 168(b)(3)(G) and 168(b)(3)(H) of the Internal
9 Revenue Code, relating to property to which the straight line
10 method applies, shall not apply.

11 (6) Sections 168(e)(3)(E)(iv) and 168(e)(3)(E)(v) of the Internal
12 Revenue Code, relating to 15-year property, shall not apply.

13 (7) Sections 168(e)(6) and 168(e)(7) of the Internal Revenue
14 Code, relating to qualified leasehold improvement property and
15 to qualified restaurant property, respectively, shall not apply.

16 (b) Section 169 of the Internal Revenue Code, relating to
17 amortization of pollution control facilities, is modified as follows:

18 (1) The deduction allowed by Section 169 of the Internal
19 Revenue Code shall be allowed only with respect to facilities
20 located in this state.

21 (2) The "state certifying authority," as defined in Section
22 169(d)(2) of the Internal Revenue Code, means the State Air
23 Resources Board, in the case of air pollution, and the State Water
24 Resources Control Board, in the case of water pollution.

25 (c) *Notwithstanding any other law to the contrary, for property*
26 *placed in service on and after January 1, 2010, the applicable*
27 *recovery period shall be one-half of the applicable recovery period*
28 *set forth in the Internal Revenue Code provision 167 or 168 or*
29 *one-half of the recovery period described in this code.*

30 (d) *Notwithstanding any other law to the contrary, for property*
31 *placed in service before January 1, 2010, the remaining applicable*
32 *recovery period shall be one-half of the applicable recovery period*
33 *set forth in the Internal Revenue Code provision 167 or 168 or*
34 *one-half of the recovery period described in this code.*

35 SEC. 7. Section 17276 of the Revenue and Taxation Code is
36 amended to read:

37 17276. Except as provided in Sections 17276.1, 17276.2,
38 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided
39 by Section 172 of the Internal Revenue Code, relating to a net
40 operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall

1 be absorbed before the amount described in clause (i) of
2 subparagraph (B).

3 (3) In the case of a taxpayer who has a net operating loss in any
4 taxable year beginning on or after January 1, 1994, and who
5 operates an eligible small business during that taxable year, each
6 of the following shall apply:

7 (A) If the net operating loss is equal to or less than the net loss
8 from the eligible small business, 100 percent of the net operating
9 loss shall be carried forward to the taxable years specified in
10 subdivision (d).

11 (B) If the net operating loss is greater than the net loss from the
12 eligible small business, the net operating loss shall be carried over
13 as follows:

14 (i) With respect to an amount equal to the net loss from the
15 eligible small business, 100 percent of that amount shall be carried
16 forward as provided in subdivision (d).

17 (ii) With respect to that portion of the net operating loss that
18 exceeds the net loss from the eligible small business, the applicable
19 percentage of that amount shall be carried forward as provided in
20 subdivision (d).

21 (C) For purposes of Section 172(b)(2) of the Internal Revenue
22 Code, the amount described in clause (ii) of subparagraph (B) shall
23 be absorbed before the amount described in clause (i) of
24 subparagraph (B).

25 (4) In the case of a taxpayer who has a net operating loss in a
26 taxable year beginning on or after January 1, 1994, and who
27 operates a business that qualifies as both a new business and an
28 eligible small business under this section, that business shall be
29 treated as a new business for the first three taxable years of the
30 new business.

31 (5) In the case of a taxpayer who has a net operating loss in a
32 taxable year beginning on or after January 1, 1994, and who
33 operates more than one business, and more than one of those
34 businesses qualifies as either a new business or an eligible small
35 business under this section, paragraph (2) shall be applied first,
36 except that if there is any remaining portion of the net operating
37 loss after application of clause (i) of subparagraph (B) of that
38 paragraph, paragraph (3) shall be applied to the remaining portion
39 of the net operating loss as though that remaining portion of the
40 net operating loss constituted the entire net operating loss.

1 (6) For purposes of this section, the term “net loss” means the
2 amount of net loss after application of Sections 465 and 469 of the
3 Internal Revenue Code.

4 (c) Section 172(b)(1) of the Internal Revenue Code, relating to
5 net operating loss carrybacks and carryovers and the years to which
6 the loss may be carried, is modified as follows:

7 (1) Net operating loss carrybacks shall not be allowed for any
8 net operating losses attributable to taxable years beginning before
9 January 1, 2011.

10 (2) (A) A net operating loss attributable to taxable years
11 beginning on or after January 1, 2011, shall be a net operating loss
12 carryback to each of the two taxable years preceding the taxable
13 year of the loss in lieu of the number of years provided therein.

14 ~~(A) For a net operating loss attributable to a taxable year~~
15 ~~beginning on or after January 1, 2011, and before January 1, 2012,~~
16 ~~the amount of carryback to any taxable year shall not exceed 50~~
17 ~~percent of the net operating loss.~~

18 ~~(B) For a net operating loss attributable to a taxable year~~
19 ~~beginning on or after January 1, 2012, and before January 1, 2013,~~
20 ~~the amount of carryback to any taxable year shall not exceed 75~~
21 ~~percent of the net operating loss.~~

22 ~~(C)~~
23 (B) For a net operating loss attributable to a taxable year
24 beginning on or after January 1, ~~2013~~ 2011, the amount of
25 carryback to any taxable year shall not exceed 100 percent of the
26 net operating loss.

27 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the
28 Internal Revenue Code, relating to special rules for REITs, and
29 Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code,
30 relating to corporate equity reduction interest loss, shall apply as
31 provided.

32 (4) A net operating loss carryback shall not be carried back to
33 any taxable year beginning before January 1, 2009.

34 (d) (1) (A) For a net operating loss for any taxable year
35 beginning on or after January 1, 1987, and before January 1, 2000,
36 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to
37 years to which net operating losses may be carried, is modified to
38 substitute “five taxable years” in lieu of “20 taxable years” except
39 as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “10 taxable years” in lieu of “20 taxable years.”

(2) For any taxable year beginning before January 1, 2000, in the case of a “new business,” the “five taxable years” in paragraph (1) shall be modified to read as follows:

(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.

(B) “Seven taxable years” for a net operating loss attributable to the second taxable year of that new business.

(C) “Six taxable years” for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(e) For purposes of this section:

(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

1 (4) In the case of any trade or business activity conducted by a
2 partnership or “S” corporation paragraphs (1) and (2) shall be
3 applied to the partnership or “S” corporation.

4 (f) For purposes of this section, in determining whether a trade
5 or business activity qualifies as a new business under paragraph
6 (2) of subdivision (e), the following rules shall apply:

7 (1) In any case where a taxpayer purchases or otherwise acquires
8 all or any portion of the assets of an existing trade or business
9 (irrespective of the form of entity) that is doing business in this
10 state (within the meaning of Section 23101), the trade or business
11 thereafter conducted by the taxpayer (or any related person) shall
12 not be treated as a new business if the aggregate fair market value
13 of the acquired assets (including real, personal, tangible, and
14 intangible property) used by the taxpayer (or any related person)
15 in the conduct of its trade or business exceeds 20 percent of the
16 aggregate fair market value of the total assets of the trade or
17 business being conducted by the taxpayer (or any related person).
18 For purposes of this paragraph only, the following rules shall apply:

19 (A) The determination of the relative fair market values of the
20 acquired assets and the total assets shall be made as of the last day
21 of the first taxable year in which the taxpayer (or any related
22 person) first uses any of the acquired trade or business assets in
23 its business activity.

24 (B) Any acquired assets that constituted property described in
25 Section 1221(1) of the Internal Revenue Code in the hands of the
26 transferor shall not be treated as assets acquired from an existing
27 trade or business, unless those assets also constitute property
28 described in Section 1221(1) of the Internal Revenue Code in the
29 hands of the acquiring taxpayer (or related person).

30 (2) In any case where a taxpayer (or any related person) is
31 engaged in one or more trade or business activities in this state, or
32 has been engaged in one or more trade or business activities in this
33 state within the preceding 36 months (“prior trade or business
34 activity”), and thereafter commences an additional trade or business
35 activity in this state, the additional trade or business activity shall
36 only be treated as a new business if the additional trade or business
37 activity is classified under a different division of the Standard
38 Industrial Classification (SIC) Manual published by the United
39 States Office of Management and Budget, 1987 edition, than are

1 any of the taxpayer's (or any related person's) current or prior
2 trade or business activities.

3 (3) In any case where a taxpayer, including all related persons,
4 is engaged in trade or business activities wholly outside of this
5 state and the taxpayer first commences doing business in this state
6 (within the meaning of Section 23101) after December 31, 1993
7 (other than by purchase or other acquisition described in paragraph
8 (1)), the trade or business activity shall be treated as a new business
9 under paragraph (2) of subdivision (e).

10 (4) In any case where the legal form under which a trade or
11 business activity is being conducted is changed, the change in form
12 shall be disregarded and the determination of whether the trade or
13 business activity is a new business shall be made by treating the
14 taxpayer as having purchased or otherwise acquired all or any
15 portion of the assets of an existing trade or business under the rules
16 of paragraph (1) of this subdivision.

17 (5) "Related person" shall mean any person that is related to
18 the taxpayer under either Section 267 or 318 of the Internal
19 Revenue Code.

20 (6) "Acquire" shall include any gift, inheritance, transfer incident
21 to divorce, or any other transfer, whether or not for consideration.

22 (7) (A) For taxable years beginning on or after January 1, 1997,
23 the term "new business" shall include any taxpayer that is engaged
24 in biopharmaceutical activities or other biotechnology activities
25 that are described in Codes 2833 to 2836, inclusive, of the Standard
26 Industrial Classification (SIC) Manual published by the United
27 States Office of Management and Budget, 1987 edition, and as
28 further amended, and that has not received regulatory approval for
29 any product from the United States Food and Drug Administration.

30 (B) For purposes of this paragraph:

31 (i) "Biopharmaceutical activities" means those activities that
32 use organisms or materials derived from organisms, and their
33 cellular, subcellular, or molecular components, in order to provide
34 pharmaceutical products for human or animal therapeutics and
35 diagnostics. Biopharmaceutical activities make use of living
36 organisms to make commercial products, as opposed to
37 pharmaceutical activities that make use of chemical compounds
38 to produce commercial products.

39 (ii) "Other biotechnology activities" means activities consisting
40 of the application of recombinant DNA technology to produce

1 commercial products, as well as activities regarding pharmaceutical
2 delivery systems designed to provide a measure of control over
3 the rate, duration, and site of pharmaceutical delivery.

4 (g) In computing the modifications under Section 172(d)(2) of
5 the Internal Revenue Code, relating to capital gains and losses of
6 taxpayers other than corporations, the exclusion provided by
7 Section 18152.5 shall not be allowed.

8 (h) Notwithstanding any provisions of this section to the
9 contrary, a deduction shall be allowed to a “qualified taxpayer” as
10 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,
11 and 17276.7.

12 (i) The Franchise Tax Board may prescribe appropriate
13 regulations to carry out the purposes of this section, including any
14 regulations necessary to prevent the avoidance of the purposes of
15 this section through splitups, shell corporations, partnerships, tiered
16 ownership structures, or otherwise.

17 (j) The Franchise Tax Board may reclassify any net operating
18 loss carryover determined under either paragraph (2) or (3) of
19 subdivision (b) as a net operating loss carryover under paragraph
20 (1) of subdivision (b) upon a showing that the reclassification is
21 necessary to prevent evasion of the purposes of this section.

22 (k) Except as otherwise provided, the amendments made by
23 Chapter 107 of the Statutes of 2000 shall apply to net operating
24 losses for taxable years beginning on or after January 1, 2000.

25 SEC. 8. Section 17276.10 of the Revenue and Taxation Code
26 is amended to read:

27 17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4,
28 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss
29 attributable to a taxable year beginning on or after January 1, 2008,
30 shall be a net operating carryover to each of the 20 taxable years
31 following the year of the loss, and a net operating loss attributable
32 to a taxable year beginning on or after January 1, ~~2011~~, 2015, shall
33 also be a net operating loss carryback to each of the ~~two~~ five taxable
34 years preceding the taxable year of loss.

35 SEC. 9. Section 23609 of the Revenue and Taxation Code is
36 amended to read:

37 23609. For each taxable year beginning on or after January 1,
38 1987, there shall be allowed as a credit against the “tax” (as defined
39 by Section 23036) an amount determined in accordance with
40 Section 41 of the Internal Revenue Code, except as follows:

- 1 (a) For each taxable year beginning before January 1, 1997,
2 both of the following modifications shall apply:
- 3 (1) The reference to “20 percent” in Section 41(a)(1) of the
4 Internal Revenue Code is modified to read “8 percent.”
- 5 (2) The reference to “20 percent” in Section 41(a)(2) of the
6 Internal Revenue Code is modified to read “12 percent.”
- 7 (b) (1) For each taxable year beginning on or after January 1,
8 1997, and before January 1, 1999, both of the following
9 modifications shall apply:
- 10 (A) The reference to “20 percent” in Section 41(a)(1) of the
11 Internal Revenue Code is modified to read “11 percent.”
- 12 (B) The reference to “20 percent” in Section 41(a)(2) of the
13 Internal Revenue Code is modified to read “24 percent.”
- 14 (2) For each taxable year beginning on or after January 1, 1999,
15 and before January 1, 2000, both of the following shall apply:
- 16 (A) The reference to “20 percent” in Section 41(a)(1) of the
17 Internal Revenue Code is modified to read “12 percent.”
- 18 (B) The reference to “20 percent” in Section 41(a)(2) of the
19 Internal Revenue Code is modified to read “24 percent.”
- 20 (3) For each taxable year beginning on or after January 1, 2000,
21 *and before January 1, 2010*, both of the following shall apply:
- 22 (A) The reference to “20 percent” in Section 41(a)(1) of the
23 Internal Revenue Code is modified to read “15 percent.”
- 24 (B) The reference to “20 percent” in Section 41(a)(2) of the
25 Internal Revenue Code is modified to read “24 percent.”
- 26 (4) *For each taxable year beginning on or after January 1,*
27 *2010, both of the following shall apply:*
- 28 (A) *The reference to “20 percent” in Section 41(a)(1) of the*
29 *Internal Revenue Code shall apply.*
- 30 (B) *The reference to “20 percent” in Section 41(a)(2) of the*
31 *Internal Revenue Code is modified to read “24 percent.”*
- 32 (c) (1) With respect to any expense paid or incurred after the
33 operative date of Section 6378, Section 41(b)(1) of the Internal
34 Revenue Code is modified to exclude from the definition of
35 “qualified research expense” any amount paid or incurred for
36 tangible personal property that is eligible for the exemption from
37 sales or use tax ~~provided by~~ *under* Section 6378.
- 38 (2) “Qualified research” and “basic research” shall include only
39 research conducted in California.

(d) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that “basic research,” for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

- (1) Basic research conducted outside California.
- (2) Basic research in the social sciences, arts, or humanities.
- (3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.
- (4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) (1) In the case of a taxpayer engaged in any biopharmaceutical research activities that are described in codes 2833 to 2836, inclusive, or any research activities that are described in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code shall be modified to include both of the following:

(A) A qualified organization as described in Section 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an institution of higher education as described in Section 3304(f) of the Internal Revenue Code.

(B) A charitable research hospital owned by an organization that is described in Section 501(c)(3) of the Internal Revenue Code, is exempt from taxation under Section 501(a) of the Internal Revenue Code, is not a private foundation, is designated a “specialized laboratory cancer center,” and has received Clinical Cancer Research Center status from the National Cancer Institute.

(2) For purposes of this subdivision:

(A) “Biopharmaceutical research activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make

1 use of living organisms to make commercial products, as opposed
2 to pharmaceutical activities that make use of chemical compounds
3 to produce commercial products.

4 (B) “Other biotechnology research and development activities”
5 means research and development activities consisting of the
6 application of recombinant DNA technology to produce
7 commercial products, as well as research and development
8 activities regarding pharmaceutical delivery systems designed to
9 provide a measure of control over the rate, duration, and site of
10 pharmaceutical delivery.

11 (f) In the case where the credit allowed by this section exceeds
12 the “tax,” the excess may be carried over to reduce the “tax” in
13 the following year, and succeeding years if necessary, until the
14 credit has been exhausted.

15 (g) For each taxable year beginning on or after January 1, 1998,
16 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
17 Internal Revenue Code, relating to contract research expenses, is
18 modified to read “this part or Part 10 (commencing with Section
19 17001).”

20 (h) (1) For each taxable year beginning on or after January 1,
21 ~~2000~~: 2000, and before January 1, 2010:

22 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
23 of the Internal Revenue Code is modified to read “one and
24 forty-nine hundredths of one percent.”

25 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
26 the Internal Revenue Code is modified to read “one and
27 ninety-eight hundredths of one percent.”

28 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
29 of the Internal Revenue Code is modified to read “two and
30 forty-eight hundredths of one percent.”

31 (2) *For each taxable year beginning on or after January 1,*
32 *2010, Section 41(c)(4) of the Internal Revenue Code, relating to*
33 *the election of the alternative incremental credit, shall apply.*

34 ~~(2)~~

35 (3) Section 41(c)(4)(B) shall not apply and in lieu thereof an
36 election under Section 41(c)(4)(A) of the Internal Revenue Code
37 may be made for any taxable year of the taxpayer beginning on or
38 after January 1, 1998. That election shall apply to the taxable year
39 for which made and all succeeding taxable years unless revoked
40 with the consent of the Franchise Tax Board.

1 ~~(3)~~

2 (4) Section 41(c)(6) of the Internal Revenue Code, relating to
3 gross receipts, is modified to take into account only those gross
4 receipts from the sale of property held primarily for sale to
5 customers in the ordinary course of the taxpayer's trade or business
6 that is delivered or shipped to a purchaser within this state,
7 regardless of f.o.b. point or any other condition of the sale.

8 (i) Section 41(h) of the Internal Revenue Code, relating to
9 termination, shall not apply.

10 (j) Section 41(g) of the Internal Revenue Code, relating to
11 special rule for passthrough of credit, is modified by each of the
12 following:

13 (1) The last sentence shall not apply.

14 (2) If the amount determined under Section 41(a) of the Internal
15 Revenue Code for any taxable year exceeds the limitation of
16 Section 41(g) of the Internal Revenue Code, that amount may be
17 carried over to other taxable years under the rules of subdivision
18 (f), except that the limitation of Section 41(g) of the Internal
19 Revenue Code shall be taken into account in each subsequent
20 taxable year.

21 SEC. 10. Section 23622.9 is added to the Revenue and Taxation
22 Code, to read:

23 23622.9. (a) For each taxable year beginning on or after
24 January 1, 2010, there shall be allowed a credit against the "tax,"
25 as defined in Section 23036, an amount equal to the sum of the
26 following percentages of wages paid or incurred by the taxpayer
27 during the taxable year to each qualified employee of the taxpayer.

28 (1) Twenty-five percent for each qualified employee employed
29 by the qualified taxpayer for at least 120 hours, but not less than
30 400 hours, during the taxable year.

31 (2) Forty percent for each qualified employee employed by the
32 qualified taxpayer for at least 400 hours during the taxable year.

33 (b) The credit under subdivision (a) shall be allowed only with
34 respect to the first six thousand dollars (\$6,000) of wages paid or
35 incurred during the taxable year to each qualified employee.

36 (c) For purposes of this section, all of the following definitions
37 shall apply:

38 (1) "Qualified employee" means an individual who is any of
39 the following, as documented by the Employment Development
40 Department:

1 (A) A recipient of CalWORKs benefits.

2 (B) A parolee.

3 (C) A veteran, as defined in Section 980 of the Military and
4 Veterans Code.

5 (D) Eligible for receipt of unemployment insurance benefits or
6 currently receiving unemployment insurance benefits.

7 (E) A person on probation.

8 (2) “Qualified taxpayer” means a taxpayer that is a person or
9 entity engaged in a trade or business within California.

10 (d) For purposes of this section the qualified taxpayer shall do
11 both of the following:

12 (1) Obtain a certificate from the Employment Development
13 Department certifying that a qualified employee is employed by
14 the qualified taxpayer.

15 (2) Retain a copy of the certification and provide it upon request
16 to the Franchise Tax Board.

17 (e) (1) For purposes of this section:

18 (A) All employees of trades or businesses, which are not
19 incorporated, that are under common control shall be treated as
20 employed by a single qualified taxpayer.

21 (B) The credit, if any, allowable by this section with respect to
22 each trade or business shall be determined by reference to its
23 proportionate share of the expense of the qualified wages giving
24 rise to the credit, and shall be allocated in that manner.

25 (C) Principles that apply in the case of controlled groups of
26 corporations, as specified in subdivision (e), shall apply with
27 respect to determining employment.

28 (2) If an employer acquires the major portion of a trade or
29 business of another employer (hereafter in this paragraph referred
30 to as the “predecessor”) or the major portion of a separate unit of
31 a trade or business of a predecessor, then, for purposes of applying
32 this section for any calendar year ending after that acquisition, the
33 employment relationship between a qualified employee and an
34 employer shall not be treated as terminated if the employee
35 continues to be employed in that trade or business.

36 (f) No credit shall be allowed under this section for any wages
37 for which any other credit or deduction has been claimed under
38 this part.

39 (g) In the case where the credit otherwise allowed under this
40 section exceeds the “tax” for the taxable year, that portion of the

1 credit that exceeds the “tax” may be carried over and added to the
2 credit, if any, in succeeding taxable years, until the credit is
3 exhausted. The credit shall be applied first to the earliest taxable
4 years possible.

5 SEC. 11. Section 23623 of the Revenue and Taxation Code,
6 as added by Section 8 of Chapter 10 of the Third Extraordinary
7 Session of the Statutes of 2009, is repealed.

8 ~~23623. (a) For each taxable year beginning on or after January~~
9 ~~1, 2009, there shall be allowed as a credit against the “tax,” as~~
10 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~
11 ~~net increase in qualified full-time employees, as specified in~~
12 ~~subdivision (e), hired during the taxable year by a qualified~~
13 ~~employer.~~

14 ~~(b) For purposes of this section:~~

15 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
16 ~~to divorce, or any other transfer, whether or not for consideration.~~

17 ~~(2) “Qualified full-time employee” means:~~

18 ~~(A) A qualified employee who was paid qualified wages during~~
19 ~~the taxable year by the qualified employer for services of not less~~
20 ~~than an average of 35 hours per week.~~

21 ~~(B) A qualified employee who was a salaried employee and~~
22 ~~was paid compensation during the taxable year for full-time~~
23 ~~employment, within the meaning of Section 515 of the Labor Code,~~
24 ~~by the qualified employer.~~

25 ~~(3) A “qualified employee” shall not include any of the~~
26 ~~following:~~

27 ~~(A) An employee certified as a qualified employee in an~~
28 ~~enterprise zone designated in accordance with Chapter 12.8~~
29 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
30 ~~Government Code.~~

31 ~~(B) An employee certified as a qualified disadvantaged~~
32 ~~individual in a manufacturing enhancement area designated in~~
33 ~~accordance with Section 7073.8 of the Government Code.~~

34 ~~(C) An employee certified as a qualified employee in a targeted~~
35 ~~tax area designated in accordance with Section 7097 of the~~
36 ~~Government Code.~~

37 ~~(D) An employee certified as a qualified disadvantaged~~
38 ~~individual or a qualified displaced employee in a local agency~~
39 ~~military base recovery area (LAMBRA) designated in accordance~~

1 with Chapter 12.97 (commencing with Section 7105) of Division
2 7 of Title 1 of the Government Code.

3 (E) An employee whose wages are included in calculating any
4 other credit allowed under this part.

5 (4) “Qualified employer” means a taxpayer that, as of the last
6 day of the preceding taxable year, employed a total of 20 or fewer
7 employees.

8 (5) “Qualified wages” means wages subject to Division 6
9 (commencing with Section 13000) of the Unemployment Insurance
10 Code.

11 (6) “Annual full-time equivalent” means either of the following:

12 (A) In the case of a full-time employee paid hourly qualified
13 wages, “annual full-time equivalent” means the total number of
14 hours worked for the taxpayer by the employee (not to exceed
15 2,000 hours per employee) divided by 2,000.

16 (B) In the case of a salaried full-time employee, “annual
17 full-time equivalent” means the total number of weeks worked for
18 the taxpayer by the employee divided by 52.

19 (c) The net increase in qualified full-time employees of a
20 qualified employer shall be determined as provided by this
21 subdivision:

22 (1) (A) The net increase in qualified full-time employees shall
23 be determined on an annual full-time equivalent basis by
24 subtracting from the amount determined in subparagraph (C) the
25 amount determined in subparagraph (B).

26 (B) The total number of qualified full-time employees employed
27 in the preceding taxable year by the taxpayer and by any trade or
28 business acquired by the taxpayer during the current taxable year.

29 (C) The total number of full-time employees employed in the
30 current taxable year by the taxpayer and by any trade or business
31 acquired during the current taxable year.

32 (2) For taxpayers who first commence doing business in this
33 state during the taxable year, the number of full-time employees
34 for the immediately preceding prior taxable year shall be zero.

35 (d) In the case where the credit allowed by this section exceeds
36 the “tax,” the excess may be carried over to reduce the “tax” in
37 the following year, and succeeding seven years if necessary, until
38 the credit is exhausted.

1 ~~(e) Any deduction otherwise allowed under this part for qualified~~
2 ~~wages shall not be reduced by the amount of the credit allowed~~
3 ~~under this section.~~

4 ~~(f) For purposes of this section:~~

5 ~~(1) All employees of the trades or businesses that are treated as~~
6 ~~related under either Section 267, 318, or 707 of the Internal~~
7 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

8 ~~(2) In determining whether the taxpayer has first commenced~~
9 ~~doing business in this state during the taxable year, the provisions~~
10 ~~of subdivision (f) of Section 17276, without application of~~
11 ~~paragraph (7) of that subdivision, shall apply.~~

12 ~~(g) (1) (A) Credit under this section and Section 17053.80 shall~~
13 ~~be allowed only for credits claimed on timely filed original returns~~
14 ~~received by the Franchise Tax Board on or before the cut-off date~~
15 ~~established by the Franchise Tax Board.~~

16 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~
17 ~~last day of the calendar quarter within which the Franchise Tax~~
18 ~~Board estimates it will have received timely filed original returns~~
19 ~~claiming credits under this section and Section 17053.80 that~~
20 ~~cumulatively total four hundred million dollars (\$400,000,000)~~
21 ~~for all taxable years.~~

22 ~~(2) The date a return is received shall be determined by the~~
23 ~~Franchise Tax Board.~~

24 ~~(3) (A) The determinations of the Franchise Tax Board with~~
25 ~~respect to the cut-off date, the date a return is received, and whether~~
26 ~~a return has been timely filed for purposes of this subdivision may~~
27 ~~not be reviewed in any administrative or judicial proceeding.~~

28 ~~(B) Any disallowance of a credit claimed due to a determination~~
29 ~~under this subdivision, including the application of the limitation~~
30 ~~specified in paragraph (1), shall be treated as a mathematical error~~
31 ~~appearing on the return. Any amount of tax resulting from such~~
32 ~~disallowance may be assessed by the Franchise Tax Board in the~~
33 ~~same manner as provided by Section 19051.~~

34 ~~(4) The Franchise Tax Board shall periodically provide notice~~
35 ~~on its Web site with respect to the amount of credit under this~~
36 ~~section and Section 17053.80 claimed on timely filed original~~
37 ~~returns received by the Franchise Tax Board.~~

38 ~~(h) (1) The Franchise Tax Board may prescribe rules, guidelines~~
39 ~~or procedures necessary or appropriate to carry out the purposes~~
40 ~~of this section, including any guidelines regarding the limitation~~

1 on total credits allowable under this section and Section 17053.80
2 and guidelines necessary to avoid the application of paragraph (2)
3 of subdivision (f) through split-ups, shell corporations, partnerships,
4 tiered ownership structures, or otherwise.

5 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
6 Division 3 of Title 2 of the Government Code does not apply to
7 any standard, criterion, procedure, determination, rule, notice, or
8 guideline established or issued by the Franchise Tax Board
9 pursuant to this section.

10 (i) This section shall remain in effect only until December 1 of
11 the calendar year after the year of the cut-off date, and as of that
12 December 1 is repealed.

13 SEC. 12. Section 23623 of the Revenue and Taxation Code,
14 as added by Section 8 of Chapter 17 of the Third Extraordinary
15 Session of the Statutes of 2009, is amended to read:

16 23623. (a) For each taxable year beginning on or after January
17 1, 2009, there shall be allowed as a credit against the “tax,” as
18 defined in Section 23036, three thousand dollars (\$3,000) for each
19 net increase in qualified full-time employees, as specified in
20 subdivision (c), hired during the taxable year by a ~~qualified~~
21 ~~employer taxpayer~~.

22 (b) For purposes of this section:

23 (1) “Acquired” includes any gift, inheritance, transfer incident
24 to divorce, or any other transfer, whether or not for consideration.

25 (2) “Qualified full-time employee” means:

26 (A) A qualified employee who was paid qualified wages during
27 the taxable year by the ~~qualified employer taxpayer~~ for services
28 of not less than an average of 35 hours per week.

29 (B) A qualified employee who was a salaried employee and
30 was paid compensation during the taxable year for full-time
31 employment, within the meaning of Section 515 of the Labor Code,
32 by the ~~qualified employer taxpayer~~.

33 (3) A “qualified employee” shall not include any of the
34 following:

35 (A) An employee certified as a qualified employee in an
36 enterprise zone designated in accordance with Chapter 12.8
37 (commencing with Section 7070) of Division 7 of Title 1 of the
38 Government Code.

1 (B) An employee certified as a qualified disadvantaged
2 individual in a manufacturing enhancement area designated in
3 accordance with Section 7073.8 of the Government Code.

4 (C) An employee certified as a qualified employee in a targeted
5 tax area designated in accordance with Section 7097 of the
6 Government Code.

7 (D) An employee certified as a qualified disadvantaged
8 individual or a qualified displaced employee in a local agency
9 military base recovery area (LAMBRA) designated in accordance
10 with Chapter 12.97 (commencing with Section 7105) of Division
11 7 of Title 1 of the Government Code.

12 (E) An employee whose wages are included in calculating any
13 other credit allowed under this part.

14 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
15 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
16 ~~employees.~~

17 ~~(5)~~

18 (4) “Qualified wages” means wages subject to Division 6
19 (commencing with Section 13000) of the Unemployment Insurance
20 Code.

21 ~~(6)~~

22 (5) “Annual full-time equivalent” means either of the following:

23 (A) In the case of a full-time employee paid hourly qualified
24 wages, “annual full-time equivalent” means the total number of
25 hours worked for the taxpayer by the employee (not to exceed
26 2,000 hours per employee) divided by 2,000.

27 (B) In the case of a salaried full-time employee, “annual
28 full-time equivalent” means the total number of weeks worked for
29 the taxpayer by the employee divided by 52.

30 (c) The net increase in qualified full-time employees of a
31 qualified employer shall be determined as provided by this
32 subdivision:

33 (1) (A) The net increase in qualified full-time employees shall
34 be determined on an annual full-time equivalent basis by
35 subtracting from the amount determined in subparagraph (C) the
36 amount determined in subparagraph (B).

37 (B) The total number of qualified full-time employees employed
38 in the preceding taxable year by the taxpayer and by any trade or
39 business acquired by the taxpayer during the ~~current~~ *preceding*
40 taxable year.

1 (C) The total number of full-time employees employed in the
2 current taxable year by the taxpayer and by any trade or business
3 acquired during the current taxable year.

4 (2) For taxpayers who first commence doing business in this
5 state during the taxable year, the number of full-time employees
6 for the immediately preceding prior taxable year shall be zero.

7 (d) In the case where the credit allowed by this section exceeds
8 the “tax,” the excess may be carried over to reduce the “tax” in
9 the following year, and succeeding seven years if necessary, until
10 the credit is exhausted.

11 (e) Any deduction otherwise allowed under this part for qualified
12 wages shall not be reduced by the amount of the credit allowed
13 under this section.

14 (f) For purposes of this section:

15 (1) All employees of the trades or businesses that are treated as
16 related under either Section 267, 318, or 707 of the Internal
17 Revenue Code shall be treated as employed by a single taxpayer.

18 (2) In determining whether the taxpayer has first commenced
19 doing business in this state during the taxable year, the provisions
20 of subdivision (f) of Section 17276, without application of
21 paragraph (7) of that subdivision, shall apply.

22 ~~(g) (1) (A) Credit under this section and Section 17053.80 shall~~
23 ~~be allowed only for credits claimed on timely filed original returns~~
24 ~~received by the Franchise Tax Board on or before the cut-off date~~
25 ~~established by the Franchise Tax Board.~~

26 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~
27 ~~last day of the calendar quarter within which the Franchise Tax~~
28 ~~Board estimates it will have received timely filed original returns~~
29 ~~claiming credits under this section and Section 17053.80 that~~
30 ~~cumulatively total four hundred million dollars (\$400,000,000)~~
31 ~~for all taxable years.~~

32 ~~(2) The date a return is received shall be determined by the~~
33 ~~Franchise Tax Board.~~

34 ~~(3) (A) The determinations of the Franchise Tax Board with~~
35 ~~respect to the cut-off date, the date a return is received, and whether~~
36 ~~a return has been timely filed for purposes of this subdivision may~~
37 ~~not be reviewed in any administrative or judicial proceeding.~~

38 ~~(B) Any disallowance of a credit claimed due to a determination~~
39 ~~under this subdivision, including the application of the limitation~~
40 ~~specified in paragraph (1), shall be treated as a mathematical error~~

appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

~~(4) The Franchise Tax Board shall periodically provide notice on its Web site with respect to the amount of credit under this section and Section 17053.80 claimed on timely filed original returns received by the Franchise Tax Board.~~

~~(h)~~

(g) (1) The Franchise Tax Board may prescribe rules, guidelines or procedures necessary or appropriate to carry out the purposes of this section, including any ~~guidelines regarding the limitation on total credits allowable under this section and Section 17053.80~~ and guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through split-ups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.

(h) No credit shall be allowed under this section for any wages for which any other credit or deduction has been claimed under this part.

(i) The amendments made to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 2010.

SEC. 13. Section 24349 of the Revenue and Taxation Code is amended to read:

24349. (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) Of property used in the trade or business; or

(2) Of property held for the production of income.

(b) Except as otherwise provided in subdivision (c), for taxable years ending after December 31, 1958, the term “reasonable allowance” as used in subdivision (a) shall include, but shall not be limited to, an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods:

(1) The straight-line method.

1 (2) The declining balance method, using a rate not exceeding
2 twice the rate that would have been used had the annual allowance
3 been computed under the method described in paragraph (1).

4 (3) The sum of the years-digits method.

5 (4) Any other consistent method productive of an annual
6 allowance that, when added to all allowances for the period
7 commencing with the taxpayer's use of the property and including
8 the taxable year, does not, during the first two-thirds of the useful
9 life of the property, exceed the total of those allowances that would
10 have been used had those allowances been computed under the
11 method described in paragraph (2).

12 Nothing in this subdivision shall be construed to limit or reduce
13 an allowance otherwise allowable under subdivision (a).

14 (c) Any grapevine replaced in a vineyard in California in a
15 taxable year beginning on or after January 1, 1992, as a direct
16 result of a phylloxera infestation in that vineyard, and any
17 grapevine replaced in a vineyard in California in a taxable year
18 beginning on or after January 1, 1997, as a direct result of Pierce's
19 disease in that vineyard, shall have a useful life of five years, except
20 that it shall have a class life of 10 years for purposes of depreciation
21 under Section 168(g)(2) of the Internal Revenue Code where the
22 taxpayer has made an election under Section 263A(d)(3) of the
23 Internal Revenue Code not to capitalize costs of the infested
24 vineyard. Every taxpayer claiming a deduction under this section
25 with respect to a grapevine as described in this subdivision shall
26 obtain a written certification from an independent state-certified
27 integrated pest management adviser, or a state agricultural
28 commissioner or adviser, that specifies that the replanting was
29 necessary to restore a vineyard infested with phylloxera or Pierce's
30 disease. The taxpayer shall retain the certification for future audit
31 purposes.

32 (d) For purposes of this part, the deduction for property leased
33 to governments and other tax-exempt entities, as defined in Section
34 168(h) of the Internal Revenue Code, shall be limited to the amount
35 determined under Section 168(g) of the Internal Revenue Code,
36 relating to alternative depreciation system for certain property.

37 (e) (1) In the case of any building erected or improvements
38 made on leased property, if the building or improvement is property
39 to which this section applies, the depreciation deduction shall be
40 determined under the provisions of this section.

1 (2) An improvement shall be treated for purposes of determining
2 gain or loss under this part as disposed of by the lessor when so
3 disposed of or abandoned if both of the following occur:

4 (A) The improvement is made by the lessor of leased property
5 for the lessee of that property.

6 (B) The improvement is irrevocably disposed of or abandoned
7 by the lessor at the termination of the lease by the lessee.

8 This subdivision shall not apply to any property to which Section
9 168 of the Internal Revenue Code does not apply for federal
10 purposes by reason of Section 168(f) of the Internal Revenue Code.
11 Any election made under Section 168(f)(1) of the Internal Revenue
12 Code for federal purposes with respect to that property shall be
13 treated as a binding election for state purposes under this
14 subdivision with respect to that same property and no separate
15 election under subdivision (e) of Section 23051.5 with respect to
16 that property shall be allowed.

17 (3) (A) In determining a lease term, both of the following shall
18 apply:

19 (i) There shall be taken into account options to renew.

20 (ii) Two or more successive leases which are part of the same
21 transaction (or a series of related transactions) with respect to the
22 same or substantially similar property shall be treated as one lease.

23 (B) For purposes of clause (i) of subparagraph (A), in the case
24 of nonresidential real property or residential rental property, there
25 shall not be taken into account any option to renew at fair market
26 value determined at the time of renewal.

27 (f) (1) Section 167(g) of the Internal Revenue Code, relating
28 to depreciation under income forecast method, shall apply except
29 as otherwise provided.

30 (2) Section 167(g)(2)(C) of the Internal Revenue Code is
31 modified by substituting “Section 19521” in lieu of “Section
32 460(b)(7)” of the Internal Revenue Code.

33 (3) Section 167(g)(5)(D) of the Internal Revenue Code is
34 modified by substituting “Part 10.2 (commencing with Section
35 18401) (other than Article 2 (commencing with Section 19021)
36 and Sections 19142 to 19150, inclusive)” in lieu of “Subtitle F
37 (other than Sections 6654 and 6655).”

38 (4) Section 167(g)(5)(E) of the Internal Revenue Code, relating
39 to treatment of distribution costs, shall not apply.

(5) Section 167(g)(7) of the Internal Revenue Code, relating to treatment of participations and residuals, shall not apply.

(g) *Notwithstanding any other provision of law to the contrary, for property placed in service on and after January 1, 2010, the applicable recovery period shall be one-half of the applicable recovery period set forth in the Internal Revenue Code provision 167 or 168 or one-half of the recovery period described in this code.*

(h) *Notwithstanding any other provision of law to the contrary, for property placed in service before January 1, 2010, the remaining applicable recovery period shall be one-half of the applicable recovery period set forth in the Internal Revenue Code provision 167 or 168 or one-half of the recovery period described in this code.*

SEC. 14. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

1 (2) In the case of a taxpayer who has a net operating loss in any
2 taxable year beginning on or after January 1, 1994, and who
3 operates a new business during that taxable year, each of the
4 following shall apply to each loss incurred during the first three
5 taxable years of operating the new business:

6 (A) If the net operating loss is equal to or less than the net loss
7 from the new business, 100 percent of the net operating loss shall
8 be carried forward as provided in subdivision (e).

9 (B) If the net operating loss is greater than the net loss from the
10 new business, the net operating loss shall be carried over as
11 follows:

12 (i) With respect to an amount equal to the net loss from the new
13 business, 100 percent of that amount shall be carried forward as
14 provided in subdivision (e).

15 (ii) With respect to the portion of the net operating loss that
16 exceeds the net loss from the new business, the applicable
17 percentage of that amount shall be carried forward as provided in
18 subdivision (d).

19 (C) For purposes of Section 172(b)(2) of the Internal Revenue
20 Code, the amount described in clause (ii) of subparagraph (B) shall
21 be absorbed before the amount described in clause (i) of
22 subparagraph (B).

23 (3) In the case of a taxpayer who has a net operating loss in any
24 taxable year beginning on or after January 1, 1994, and who
25 operates an eligible small business during that taxable year, each
26 of the following shall apply:

27 (A) If the net operating loss is equal to or less than the net loss
28 from the eligible small business, 100 percent of the net operating
29 loss shall be carried forward to the taxable years specified in
30 paragraph (1) of subdivision (e).

31 (B) If the net operating loss is greater than the net loss from the
32 eligible small business, the net operating loss shall be carried over
33 as follows:

34 (i) With respect to an amount equal to the net loss from the
35 eligible small business, 100 percent of that amount shall be carried
36 forward as provided in subdivision (e).

37 (ii) With respect to that portion of the net operating loss that
38 exceeds the net loss from the eligible small business, the applicable
39 percentage of that amount shall be carried forward as provided in
40 subdivision (e).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any taxable year in which the taxpayer has in effect a water’s-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water’s-edge election under Section 25110 had been in effect for the taxable year in which the loss was incurred.

(d) Section 172(b)(1) of the Internal Revenue Code, relating to net operating loss carrybacks and carryovers and the years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2011.

(2) (A) A net operating loss attributable to taxable years beginning on or after January 1, 2011, shall be a net operating loss

1 carryback to each of the two taxable years preceding the taxable
2 year of the loss in lieu of the number of years provided therein.

3 ~~(A) For a net operating loss attributable to a taxable year~~
4 ~~beginning on or after January 1, 2011, and before January 1, 2012,~~
5 ~~the amount of carryback to any taxable year shall not exceed 50~~
6 ~~percent of the net operating loss.~~

7 ~~(B) For a net operating loss attributable to a taxable year~~
8 ~~beginning on or after January 1, 2012, and before January 1, 2013,~~
9 ~~the amount of carryback to any taxable year shall not exceed 75~~
10 ~~percent of the net operating loss.~~

11 ~~(C)~~
12 (B) For a net operating loss attributable to a taxable year
13 beginning on or after January 1, ~~2013~~ 2011, the amount of
14 carryback to any taxable year shall not exceed 100 percent of the
15 net operating loss.

16 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the
17 Internal Revenue Code, relating to special rules for REITs, and
18 Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code,
19 relating to corporate equity reduction interest loss, shall apply as
20 provided.

21 (4) A net operating loss carryback shall not be carried back to
22 any taxable year beginning before January 1, 2009.

23 (e) (1) (A) For a net operating loss for any taxable year
24 beginning on or after January 1, 1987, and before January 1, 2000,
25 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to
26 years to which net operating losses may be carried, is modified to
27 substitute “five taxable years” in lieu of “20 years” except as
28 otherwise provided in paragraphs (2), (3), and (4).

29 (B) For a net operating loss for any income year beginning on
30 or after January 1, 2000, and before January 1, 2008, Section
31 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years
32 to which net operating losses may be carried, is modified to
33 substitute “10 taxable years” in lieu of “20 taxable years.”

34 (2) For any income year beginning before January 1, 2000, in
35 the case of a “new business,” the “five taxable years” referred to
36 in paragraph (1) shall be modified to read as follows:

37 (A) “Eight taxable years” for a net operating loss attributable
38 to the first taxable year of that new business.

39 (B) “Seven taxable years” for a net operating loss attributable
40 to the second taxable year of that new business.

1 (C) “Six taxable years” for a net operating loss attributable to
2 the third taxable year of that new business.

3 (3) For any carryover of a net operating loss for which a
4 deduction is denied by Section 24416.3, the carryover period
5 specified in this subdivision shall be extended as follows:

6 (A) By one year for a net operating loss attributable to taxable
7 years beginning in 1991.

8 (B) By two years for a net operating loss attributable to taxable
9 years beginning prior to January 1, 1991.

10 (4) The net operating loss attributable to taxable years beginning
11 on or after January 1, 1987, and before January 1, 1994, shall be
12 a net operating loss carryover to each of the 10 taxable years
13 following the year of the loss if it is incurred by a corporation that
14 was either of the following:

15 (A) Under the jurisdiction of the court in a Title 11 or similar
16 case at any time prior to January 1, 1994. The loss carryover
17 provided in the preceding sentence shall not apply to any loss
18 incurred in an income year after the taxable year during which the
19 corporation is no longer under the jurisdiction of the court in a
20 Title 11 or similar case.

21 (B) In receipt of assets acquired in a transaction that qualifies
22 as a tax-free reorganization under Section 368(a)(1)(G) of the
23 Internal Revenue Code.

24 (f) For purposes of this section:

25 (1) “Eligible small business” means any trade or business that
26 has gross receipts, less returns and allowances, of less than one
27 million dollars (\$1,000,000) during the income year.

28 (2) Except as provided in subdivision (g), “new business” means
29 any trade or business activity that is first commenced in this state
30 on or after January 1, 1994.

31 (3) “Title 11 or similar case” shall have the same meaning as
32 in Section 368(a)(3) of the Internal Revenue Code.

33 (4) In the case of any trade or business activity conducted by a
34 partnership or an “S corporation,” paragraphs (1) and (2) shall be
35 applied to the partnership or “S corporation.”

36 (g) For purposes of this section, in determining whether a trade
37 or business activity qualifies as a new business under paragraph
38 (2) of subdivision (e), the following rules shall apply:

39 (1) In any case where a taxpayer purchases or otherwise acquires
40 all or any portion of the assets of an existing trade or business

(irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person).

For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer’s (or any related person’s) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) “Related person” shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) “Acquire” shall include any transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term “new business” shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) “Biopharmaceutical activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) “Other biotechnology activities” means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any taxable year that may be carried forward to another taxable year.

1 (2) The amount of any loss carry forward that may be deducted
2 in any taxable year.

3 (i) The provisions of Section 172(b)(1)(D) of the Internal
4 Revenue Code, relating to bad debt losses of commercial banks,
5 shall not be applicable.

6 (j) The Franchise Tax Board may prescribe appropriate
7 regulations to carry out the purposes of this section, including any
8 regulations necessary to prevent the avoidance of the purposes of
9 this section through splitups, shell corporations, partnerships, tiered
10 ownership structures, or otherwise.

11 (k) The Franchise Tax Board may reclassify any net operating
12 loss carryover determined under either paragraph (2) or (3) of
13 subdivision (b) as a net operating loss carryover under paragraph
14 (1) of subdivision (b) upon a showing that the reclassification is
15 necessary to prevent evasion of the purposes of this section.

16 (l) Except as otherwise provided, the amendments made by
17 Chapter 107 of the Statutes of 2000 shall apply to net operating
18 losses for taxable years beginning on or after January 1, 2000.

19 SEC. 15. Section 24416.10 of the Revenue and Taxation Code
20 is amended to read:

21 24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4,
22 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss
23 attributable to a taxable year beginning on or after January 1, 2008,
24 shall be a net operating carryover to each of the 20 taxable years
25 following the year of the loss, and a net operating loss attributable
26 to a taxable year beginning on or after January 1, ~~2011~~, 2015, shall
27 also be a net operating loss carryback to each of the ~~two~~ five taxable
28 years preceding the taxable year of loss.

29 SEC. 16. This act provides for a tax levy within the meaning
30 of Article IV of the Constitution and shall go into immediate effect.